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Supreme Court, U.S.
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No. 08-841

In The

Supreme Court of the United States

OCTOBER TERM 2008

M.H. and J.H. on behalf of their child, L.H.,

Petitioners,

-against-

MONROE-WOODBURY CENTRAL SCHOOL DISTRICT,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should review the determination of the Second Circuit that due weight should be accorded to the decision of administrative hearing officers when federal courts review a claim for tuition reimbursement under the Individuals With Disabilities Education Act.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE PETITION 6

1. The conflict asserted to exist among the Circuits will not present itself for review on the record before the Court 6

   a. Petitioner is, in fact, in disagreement with Rowley's "due weight" requirement, and not any independent holding of the Second Circuit. 7

   b. No rational construction of the Second Circuit's holding would require district courts to "rubber stamp" administrative findings under IDEA. 8

2. Since the District Court failed to accord any weight whatsoever to the administrative decision makers, the District Court decision would not have withstood appellate scrutiny, under any definition of due weight. 11

CONCLUSION 15

TABLE OF AUTHORITIES

CASES:

Adams v. Oregon,
195 F.3d 1141 (9th Cir., 1999) 12

Burilovich v. Board of Ed,
208 F.3d 560 (6th Cir., 2000) 12

D.F. ex rel N.C. v. Ramapo Central School District,
430 F. 3d 595 (2d Cir. 2005) 10

Dale M. ex rel Alice M. v. Board of Education of Bradley-Bourbounnais High School District No. 307,
237 F.3d 813 (7th Cir. 2001) 13

Doyle v. Arlington County School Board,
953 F.2d 100 (4th Cir. 1997) 11

Forest Grove School Dist. v. T.A,
2009 WL 104297 (U.S.) 2

Fort Zumwalt School District v. Clynes,
119 F.3d 607; cert. den. 523 U.S. 1137
(8th Cir. 1998) 12

Frank G. v. Hyde Park School District,
459 F. 3d 356,367 (2d. Cir. 2006) 10, 13

Gilbert v. Homar,
52 U.S. 924, (1997) 14

Lenn v. Portland S.D.,
998 F.2d 1086 (1st Cir. 1993) 11

Lillbask ex rel Mauclaire v. State of Conn.
397 F.3d 77 (2d Cir. 2005) 10

Mrs. B. v. Milford
103 F.3d 114 (2d Cir. 1997) 10

Muller o/b/o Muller v. Committee on Special Education
145 F. 3d 95 (2d Cir. 1998) 10

Rowley v. Hendrick Hudson Central School District,
458 U.S. 176, 206 (1982) ..... 4, ... Passim

School Committee of Burlington v. Department of Education,
451 U.S. 359 (1985). 2

Teague v. Independent School Dist.,
999 F.2d 127, 131 (5th Cir. 1993) 11

OTHER AUTHORITY:

STATUTES

§ 1412(a)(10)(c) of IDEA 2

20 U.S.C. 1415(e)(2) 3

INTRODUCTION

Respondent Board of Education of the Monroe-Woodbury Central School District ("Board" or "Respondent") requests that this Court deny the petition for a writ of certiorari from the decision of the United States Court of Appeals for the Second Circuit. The citation for the decision below is M.H. and J.H., on their own behalf and on behalf of their daughter L.H. v. Monroe-Woodbury Central School District, _F.3d_2008 W.L. 4507592 (2d Cir. 2008).

STATEMENT OF THE CASE

Procedural History

1. Administrative Hearings – Petitioner had instituted an impartial hearing under the Individuals With Disabilities Education Act ("IDEA") seeking reimbursement from respondent for the cost of tuition for their daughter at a private school under the test set forth in this Court's decision in School Committee of Burlington v. Department of Education, 451 U.S. 359, 369-370 (1985).[1]

New York State has a two-tiered system for administrative prosecution of due process complaints under the Individuals with Disabilities Education Act. At the first tier, the impartial hearing officer ("IHO"), denied tuition reimbursement to the parent on the grounds that the Board was providing L.H. with an appropriate education, at an approved private day school. In dicta, the IHO went on to state that he felt the parent's preferred program, though it had problems, was also an appropriate placement. No tuition reimbursement was awarded to the parent, however, as the school district's placement was found to be appropriate.

On appeal, the New York State Education Department's State Review Officer ("SRO") also found

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[1] As L.H. had, for many years, received special education and related services from the school district prior to the demand for tuition reimbursement, this case does not present for review the issue this Court recently agreed to hear in Forest Grove School Dist. v. T.A. 2009 WL 104297 i.e., whether § 1412(a)(10)(c) of the IDEA creates a categorical bar to tuition reimbursement for students who have not previously received special education and related services from a public school district.

that the Board's individualized education plan ("IEP") was appropriate, and that tuition reimbursement was, accordingly, not warranted. The SRO found specifically that:

- consistent with the recommendations of the student's treating professionals, the Summit School (i.e., the school district's recommended placement) offered a structured, therapeutic environment, and classes with a low student to teacher ratio;

- after a brief adjustment period, the student had begun to follow the rules and attend class at Summit; was neither expressing suicidal thoughts nor engaging in self-abusive behavior while at that placement; and was also succeeding academically there;

- the student did not require a residential placement in order to receive a free, appropriate public education during the 2005-2006 school year.

2. District Court – Upon the parent's appeal to the District Court [pursuant to 20 U.S.C. 1415(e)(2)] the case was decided upon a motion (and cross-motion) for summary judgment. Neither party requested a hearing from the District Court, and no additional evidence was received by the district court, so that Court made its determination on the same record which had been before the administrative decision makers.

Although it had neither conducted any hearing, nor received any additional evidence, the District Court rejected both SRO and IHO's finding that the District's IEP was appropriate. It also found the private, unilateral residential placement made by the family to be appropriate, again, based upon the same record

before the SRO. The District Court acknowledged that there had been no procedural violations of IDEA by the school district; accordingly, the only issue remaining was whether the District's IEP was reasonably calculated to provide meaningful educational benefit to the student, under the test enunciated in this Court's decision in Rowley v. Hendrick Hudson Central School District, 458 U.S.176 (1982). The District Court also rejected respondent's argument (which had been adopted by the SRO) that the student's undisputed academic progress at Summit demonstrated that placement was appropriate, stating that: "...if academic competency was enough, then the District High School would have continued to be an appropriate placement." Petition for Writ of Certiorari, at page A-18.

The District Court did, however, agree that the student had been progressing appropriately at the Summit School, with regard to her academics: "...(W)hen L.H. arrived at Summit, after initial difficulties, she began to display the same academic competence that she had in the District High School." Id.

3. The Second Circuit's Decision - Upon appeal by the Board, the Second Circuit reversed the District Court's award of tuition reimbursement. In its decision, the Second Circuit reviewed the language of this Court's decision in Rowley, as well as its own decisions, which point out that: "...IDEA's statutory scheme requires substantial deference to state administrative bodies on matters of educational policy." Rowley, at 458 U.S. 176, 205-208 (1982). That Second Circuit also pointed out that courts reviewing administrative decisions under IDEA:

> ...must engage in an independent review of the administrative record and make a determination based on a preponderance of the evidence, the Supreme Court has cautioned that such review is by no means an invitation to the Courts to substitute their own notions of sound educational policy to those of the school authorities which they review.

Id.

According "due weight" to the SRO's decision, the Circuit Court declined to disturb the administrative finding as to the IEP's appropriateness. The Court pointed out that the record did reflect the student was making academic progress in respondent's placement; that she was making improvements in her social and emotional problems in that placement, and that none of the reports suggested that, in order to advance academically, the student needed a residential program to deal with her emotional problems. Petition for Writ of Certiorari, at A-6 and A-7.

The Second Circuit found, therefore, found the parent was not entitled to tuition reimbursement under IDEA.

In so ruling, the Second Circuit specifically found no substantial evidence existed to reverse the IHO or SRO on the issue of the appropriateness of the District's placement.

Petitioner did not seek rehearing of the Second Circuit's decision, and now seeks a grant of certiorari from this Court.

REASONS FOR DENYING THE PETITION

It is respectfully submitted that the Petition should be denied, since:

1) The conflict asserted to exist among the Circuits (as to what constitutes "due weight" for the purpose of judicial review of an impartial hearing under IDEA) will not present itself for review on this record, and:

2) Since the District Court failed to accord any weight whatsoever to the administrative decision makers, the District Court decision would not have withstood appellate scrutiny under any definition of due weight.

1) The conflict asserted to exist among the Circuits will not present itself for review on the record before the Court

Petitioner argues certiorari should issue since the Second Circuit's decision accords "undue deference" to state administrative decisions, and employs a standard at odds with that employed in other Circuits. Pet. for Writ of Cert., at pp. "18" – "25".

Even if that were a question this Court was otherwise disposed to address, this case simply does not present that issue for review on the record presented, as discussed below.

(a) Petitioner, in fact, is in disagreement with Rowley's "due weight" requirement, and not any independent holding of the Second Circuit.

The Second Circuit's decision specifically acknowledges Rowley's teaching that courts must engage in an independent review of the administrative record and make a determination based on a preponderance of the evidence. Petition for Writ of Certiorari, at A-4.

The Second Circuit's decision also acknowledges (again, quoting Rowley) that this Court has also cautioned that a district court's review "...is by no means an invitation to the Courts to substitute their own notions of sound educational policy for those of the school authorities which they review" (Pet. for Writ of Certiorari, at A-4), and that courts are constrained to accord "due weight" to administrative proceedings, as the judiciary "...generally lacks the specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy" Id.

Petitioner clearly disagrees with this principle i.e., that due weight must be accorded to administrative decision makers, because of the judiciary's more limited expertise in dealing with matters of educational policy.[2] Petitioner's dissatisfaction, however, does not lie with any independent pronouncement by the Second Circuit, but, reflects instead a disagreement with this Court's

[2] See, also., Petition for Writ of Certiorari, at A-20 – "The Second Circuit has given lip service to this notion emphasizing instead the alleged 'lack of expertise' federal courts have to 'second guess' decisions allegedly reached by persons with much greater expertise."

own holding in Rowley. The Petition for Certiorari, in fact, notably avoids any mention of Rowley's holding that:

> ...the provision that a reviewing court base its decision on the preponderance of the evidence" is by no means an invitation to the courts to substitute their own notions of sound educational policy for there at the school authorities which they review... the fact that § 1415(e) requires that the reviewing court 'receive the records at the (state) administrative proceedings' carries with it the implied requirement that due weight shall be given to those proceedings.

Rowlezy, at 458 U.S. 176.206.

It is, therefore, Rowley's due weight requirement, and not any teaching of the Second Circuit, with which petitioner disagrees; accordingly, certiorari should not be granted.

(b) No rational construction of the Second Circuit's holding would require district courts to "rubber stamp" administrative findings under IDEA -

No rational reading of the Second Circuit's decision warrants the conclusion that district courts must either "rubber stamp" administrative decisions or are precluded from applying a preponderance of evidence standard to IDEA appeals.

Neither directly nor by implication, does the Second Circuit's decision hold that an administrative hearing officer's findings under IDEA are conclusive on a district court. The Circuit Court's decision here can

in no way be read to require blind obeisance to administrative rulings, and instead, is grounded upon that Court's independent conclusion that the administrative decision maker's findings were amply supported by the record.

Analysis of the decision below indicates it was predicated upon a fact-based review of the administrative record, in which the Court examined whether the SRO's finding regarding the appropriateness of the District's placement was sufficiently supported by that record and, therefore, entitled to deference. While Petitioner obviously disagrees with the Circuit Court's decision that the SRO's finding was supported by the record, that disagreement provides no basis for this Court's intervention.

The decision is, therefore, squarely in line with settled law that, under this Court's decision in Rowley, that "due weight" should be accorded to administrative decision makers.[3]

Other Decisions by the Second Circuit Reflect That it Does Not Require Complete Deference to Administrative Decision Makers under IDEA.

While the Petition suggests that "...in nearly every such case, the Second Circuit has affirmed hearing officer decisions in IDEA cases," that characterization, it is respectfully submitted, is demonstrably incorrect.

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[3] Petitioner's argument that "...it is time for this Court to interpret the IDEA as it is written" suggests that it is Petitioner's position that Rowley rewrites IDEA by according "due weight" to administrative hearing officers.

For example, in Frank G. v. Hyde Park School District 459 F. 3d 356, 367 (2d. Cir. 2006), cert. den. ___U.S.___, 128 S.Ct. 436 (2007) the Second Circuit recently affirmed a District Court's reversal of the state administrative decision maker, pointing out the District Court:

> ...correctly applied the rule that, when reviewing administrative decisions, federal courts must base their decisions on 'the preponderance of the evidence' taking into account the evidence in the administrative record and any further evidence presented before the District Court by the parties.

Other instances where the Second Circuit has upheld District Court reversals of impartial hearing officers include D.F. ex rel N.C. v. Ramapo Central School District 430 F. 3d 595 (2d Cir. 2005); Lillbask ex rel Mauclaire v. State of Conn. 397 F.3d 77 (2d Cir. 2005); Mrs. B. v. Milford, 103 F.3d 114 (2d Cir. 1997), and Muller o/b/o Muller v. Committee on Special Education 145 F. 3d 95 (2d Cir. 1998).

As the Second Circuit has reversed hearing officers on issues ranging from educational progress (Frank G.), to the appropriate standard for review of an individualized education plan (D.F.), to the issue of classification under IDEA (Muller), it simply cannot be credibly argued that the Second Circuit requires district courts to "rubber stamp" administrative decisions, and the Petition for Writ of Certiorari should be denied.

Accordingly, the issue for which review is sought is not raised by the decision below.

2) **Since the District Court failed to accord any weight whatsoever to the administrative decision makers, the District Court decision would not have withstood appellate scrutiny under any definition of "due weight"**

Another reason ~~why it is~~ submitted that the Petition presents no reviewable issue on the "due weight" standard is that the District Court here accorded no weight whatsoever to the SRO's decision on the appropriateness of the school district program. The District Court in this case simply substituted its own subjective judgment for that of the IHO and SRO on the issue of appropriateness of the district's program, despite the fact it neither conducted its own hearing nor received additional evidence. It neither analyzed the district's individualized educational plan nor came to grips with the SRO's resolution of each material issue. It is respectfully submitted the District Court accorded no weight to the administrative hearing officers, and its decision would not have withstood scrutiny under any formulation of "due weight."

All circuits appear to interpret Rowley's "due weight" requirement as mandating that some deference be accorded the administrative decision maker. See e.g., Teague v. Independent School Dist., 999 F.2d 127, 131 (5th Cir. 1993) [...the district court should give the hearing officer's findings 'due weight,' even though hearing officer's findings are not conclusive]; Lenn v. Portland S.D., 998 F.2d 1083 (1st Cir. 1993) [IDEA requires a more critical appraisal of the agency determination than clear-error review entails, but it nevertheless falls well short of complete de novo review]; Doyle v. Arlington County School Board, 953

F.2d 100 (4th Cir. 1997) [hearing officer's findings of fact are considered prima facie correct; court must explain reasons if not following findings]; Burilovich v. Board of Ed, 208 F.3d 560, 566 (6th Cir., 2000) [weight accorded due administrative decisions will vary, depending on whether the Court is reviewing procedural matters and whether educational expertise is essential to the administrative findings]; Dale M., supra at 237 F.3d 813 (7th Cir. 2001) [when district court bases its decision on review of the record, he must accord "due deference" to record; mere disagreement with administrative decision insufficient; court must be "strongly convinced" order is erroneous]; Fort Zumwalt School District v. Clynes, 119 F.3d 607, 610, cert. den. 523 U.S. 1137 (8th Cir. 1998) [level of deference to administrative decision less than required under substantial evidence test, but consideration should be given to state hearing panel's opportunity to observe demeanor of witnesses]; Adams v. Oregon, 195 F.3d 1141, 1145 (9th Cir., 1999) [increased deference should be accorded hearing officer where findings are thorough and complete].

As this review demonstrates, while the language of the various circuits on decisions addressing "due weight" may not be identical, the common threads running through these decisions are that:

- the District Court's review of the administrative record is something less than de novo;

- some deference must be accorded the administrative decision maker, which deference may vary according to the attendant circumstances, including whether the District Court heard additional testimony, and whether the administrative decision

was thorough and closely reasoned.

The Second Circuit's related observation that the deference accorded to administrative decision makers is greater where the district court itself did not itself conduct a hearing is also entirely in line with the decisions of other circuits on this issue. See e.g., Dale M. ex rel Alice M. v. Board of Education of Bradley-Bourbounnais High School District No. 307, 237 F.3d 813, (7th Cir. 2001) ["...(w)hen the court has before it evidence that was not before the hearing officers, the amount of deference due the reviewing officer declines, since the latter's decision was based on an incomplete record. But when there either is no new evidence or the judge for some reason does not consider it, he owes considerable deference to the reviewing officer"].

The Second Circuit has, similarly, upheld a district court's reversal of administrative hearing officers where the district Court held its own hearing and received additional evidence. Frank G. v. Board of Educ. of Hyde Park, 459 F.3d 356, 367, cert. den. U.S., 128 S. Ct. 436 (2007)

Therefore, while petitioner may argue that the outcome of an IDEA appeal will likely depend upon the circuit or court in which it was filed, it is respectfully submitted the outcome of this particular case would not vary, since this District Court accorded no deference whatsoever to the administrative findings, which is inconsistent with any interpretation of Rowley's "due weight" requirement. This Court, therefore, need not reach the issue of the purported "split" among the Circuits on this record.

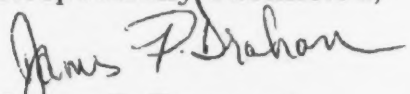
To the extent petitioner now (under this

argument) seeks a uniform definition of "due weight" from this Court which can be inflexibly applied to every IDEA review by a court (regardless of the attendant circumstances), we respectfully submit that invitation should be declined by the Court. "Due weight" (much like "due" process) is, by definition, a concept not susceptible of rigid and formulaic application. See e.g., Gilbert v. Homar, 520 U.S. 924, (1997) ["...(d)ue process is flexible and calls for such procedural protections as the particular situation demands."] As "due weight" will similarly and necessarily vary with each particular situation, it is respectfully submitted that codification of that standard is neither necessary nor appropriate.

CONCLUSION

For all the foregoing reasons, the petition should be denied.

Respectfully submitted,



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